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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,543	02/07/2001	Glenn R. Godley	6253-28	5035

7590 12/22/2003

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EXAMINER	
SOTOMAYOR, JOHN	
ART UNIT	**PAPER NUMBER**
3714	21

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,543	GODLEY, GLENN R.	
	Examiner	Art Unit	
	John L Sotomayor	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-16,18 and 19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-16,18 and 19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

1. In response to the amendment filed October 15, 2003, claims 3 and 17 are cancelled and claims 1,2,4-16, 18 and 19 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,4-5,9-12,15,18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hicks (US 3,847,120).

Regarding claims 1 and 18, Hicks discloses an apparatus and method of teaching which contains a sensor for detecting the presence of a subject (Col 1, lines 66-67), a system for playing back a predetermined message upon detection of the presence of the subject (Col 3, lines 1-14), a housing which contains the sensor and the payback initiation system (Col 2, lines 54-62), and means for selecting a prerecorded sound to be played (claim 18)(Col 3, lines 5-14).

Regarding claim 2, Hicks discloses a system for selecting a prerecorded sound to be played (Col 3, lines 5-14).

Regarding claims 4, Hicks discloses an apparatus comprising a system for recording sounds that are audible to animals (claim 4) (Col 2, lines 21-28).

Regarding claim 5, Hicks discloses a system wherein a sensor comprises a movement sensing device (Col 3, lines 1-6).

Regarding claims 9-12, Hicks discloses an apparatus wherein the apparatus comprises a bird perch (claim 9), which is detachable (claim 10), a mirror (claim 11) that is contained within the housing (claim 12) (Col 1, lines 64-67 and Col 2, lines 1-8).

Regarding claim 15, Hicks discloses an apparatus that is capable of freely standing (Fig 1).

Regarding claim 19, Hicks discloses an instructional device for a bird which, upon detection of a bird, plays back a prerecorded message which includes a mirror affixed to the front portion of the device, and a perch assembly coupled to the lower portion of the housing (Fig. 2).

4. Claims 1, 4-6 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (US 5,726,629).

Regarding claims 1 and 18, Yu discloses an apparatus with a presence sensing detector wherein the system initiates playback of a predetermined message upon detection of the presence of a subject, contained within a housing (Col 2, lines 6-43) for the subject to hear.

Regarding claim 4, Yu discloses a system for recording sounds that are audible to animals (Col 2, lines 48-60).

Regarding claim 5, Yu discloses a system that contains a movement-sensing device (Col 2, lines 20-22).

Regarding claim 6, Yu discloses a system with a light-sensing device for detecting the absence of light (Col 2, lines 20-22).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 6-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks. Hicks discloses a sensor for use in detecting the presence of a bird that consists of a mechanical microswitch to activate the device upon detection of a bird's presence (Col 3, lines 1-14). Hicks does not specifically disclose that the switch sensor is a light sensing device (claim 6), a laser detection device (claim 7) or a heat sensing device (claim 8). However, applicant presents a plurality of sensor means for detecting the presence of a bird and activating the playback function of the apparatus. In this case, the sensor means is not critical to the function of activating the playback function, it is enough that the sensor detect the presence and activate the playback means, and the preamble breathes no life and meaning into the claims. In this instance, if the system is mounted outdoors in an area sure to encounter inclement weather and possible damage from animals the system was not designed to accommodate, it would have been obvious

to provide a light, laser or heat sensor instead of a mechanical sensor to increase the durability of the apparatus to perform its intended function. Therefore, it would have been obvious to select a sensor means known to individuals of ordinary skill in the art to be optimized for the environment in which the apparatus would be deployed as the selection of known materials is based on suitability for the intended use (In re Leshin, 125 USPQ 416).

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks in view of Whitaker (US Re. 36,322). Hicks does not specifically disclose an apparatus with a means for attachment to a birdcage (claim 13) or that the attachment means comprises a bracket (claim 14). However, Whitaker teaches a bird training device which is attached to a birdcage through the use of a bracket (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to attach a bird training device to a birdcage using a bracket for the purposes of keeping the bird secure and available for training sessions as desired by the user.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks in view of Manico et al (US 5,904,330). Hicks does not specifically disclose a training apparatus for a bird containing a trough. However, Manico et al teaches a bird device with a perch that contains a trough in the space created between the bird perch and the device (Fig 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a trough for the purposes of enticing a bird to rest upon the perch by placing bird food in the perch to make the bird available for a training session.

Response to Arguments

Applicant's arguments filed October 15, 2003 have been fully considered but they are not persuasive. Applicant's representative presents the argument that the mechanical lever in the Hicks reference is not a sensor. However, according to Webster's New Riverside Dictionary, a sensor is a device that detects and responds to a signal or stimulus. By this definition, the mechanical lever that a bird sits upon, when then depresses a switch to close a contact and initiate a playback device, does constitute a sensor. As such, the Hicks reference does disclose a sensor, of a mechanical type, and therefore does disclose this element and the argument is unpersuasive.

Applicant's representative also presents the argument that Hicks does not anticipate the initiation of the system for playback when the detachable bird perch is removed. This argument is unpersuasive because applicant's claims do not claim that the system must allow initiation and operation while the bird perch is detached from the system. The combination of claims 1, 9 and 10 at most presumes an operational playback device with a presence detecting bird perch, wherein said bird perch is detachable. The combination set forth in said claims is anticipated by Hicks.

Applicant's representative also presents the argument that a presence detector is distinct from a motion detector and that the prior art would not detect presence from a motion detector. However, in the instant case there is no functional difference between a motion detector and a presence detector. The training device is stationary, thus there is no means for a bird to find itself upon the perch except through flying through the field of motion detection to land upon the perch set in the front of the device. The motion detection field is easily tuned to extend an active radius no further out than the bird perch, thus detecting the presence of the bird. Functionally,

this is the same performance required of the presence detector in this invention and Yu does anticipate the invention.

With regard to the argument that the Hicks reference doesn't provide an obvious rationale for the use of various types of detectors in the invention and thus does not provide a case for the obvious use of one of a plurality of presence detectors, in the specification at page 2, line19, the applicant provides support only for a sensor to detect the presence of a subject in order to initiate the playback of a pre-recorded sound recording. Please reference rejection above for reasoning concerning this argument.

The argument that inserting a trough between the movable perch and the front surface of the apparatus disclosed in Hicks/Manico et al would require that the trough be attached to the movable perch and thus be subject to spillage or impair the movement of the mechanical perch is unpersuasive. Manico et al clearly shows in figure 1 that the perch is attached to the body of the apparatus and Hicks shows in figure 1, item 13, two attachment screws from which a trough could clearly be attached in the manner taught by Manico et al without affecting the performance of the perch or the trough.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Sotomayor whose telephone number is 703-305-4558. The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-746-8361.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4558.

jls
December 15, 2003

S. THOMAS HUGHES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700